IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.
WRIT PETITION NO.8107 OF 2005

Smt Muktabai Govind Bhosale and anr. Petitioners.

Vs

Shri Krishna Laxman Bhosale and ors Respondents.

Mr P.A.Pol, for the petitioners.
Mr M.R.Suryawanshi, for respondent no.1.

CORAM : D.B.BHOSALE,J.
DATE : 18.10.2006
PC:

1. Heard the learned counsel for the parties.

2. Rule. Returnable forthwith. Mr Suryawanshi. learned counsel, waives service for respondent no.1. By consent, rule is heard finally.

3. This writ petition is directed against the four orders passed on the applications at Exhibits 1, 21, 26 and 40 dated 17.10.03, 3.9.04, 5.3.05 and 15.9.05 respectively. By order dated 17.10.03, the trial Court passed "No W.S." order. By order dated 3.9.2004, the application of the petitioners requesting to adopt their reply to Exhibit-5 application as Written Statement was rejected. By order dated 5.3.2005, the petitioners'application at Exhibit-26 for setting aside the order dated 17.10.2003 and allowing the petitioners

to file written statement was rejected, and by order dated 15.9.2005, the application filed by the petitioners at Exhibit-40 once again requesting the court to allow them to adopt their reply to Exhibit-5 application as written statement by setting aside "No W.S." order dated 17.10.2003 was rejected. It appears that the suit was filed on 9.6.2003. The summons on the defendants including the petitioners-defendant nos 1 and 2 were served on 21.6.2003. On 18.9.2003, the petitioners had filed the application seeking time to file the written statement and it appears that no time was granted, as prayed for, and hence the subsequent orders i.e. orders dated 3.9.2004, 5.3.2005 and 15.9.2005 came to be passed. There is no dispute that the reply to Exhibit-5 application was filed within 90 days from the date of service of the summons. The suit filed by the respondent-plaintiff is for partition and separate possession of his share in the properties. All the orders, impugned in the petition, were passed by the courts below overlooking the law settled by this court in Sheleja A Sawant Vs Sayajirao Ganpatrao Patil, 2004 (2) Mah.L.J.419 which has been confirmed by the Division Bench of this Court in Chintaman Sukhdeo Kaklij & Ors Vs. Shivaji Bhausaheb Gadhe and ors, 2004(5) Bom.C.R.573 and by the Supreme Court in Rani Kusum Vs Kanchan Devi, 2005 (10) LJSOFT (SC) 10. Keeping that in

view and considering the overall facts and circumstances of the case, I am satisfied that the ends of justice would be met by allowing the petitioners to file their written statement subject to payment of cost and hence I pass the following order.

(a) All the orders impugned in the present writ petition are quashed and set aside. The petitioners are allowed to file their written statement within two weeks from the date of receipt of this order subject to payment of cost of Rs.1000/- to be paid to the respondents-plaintiffs. If the petitioners fail to file written statement within the time stipulated, the trial Court to proceed with hearing of the suit without written statement. Hearing of the suit is expedited.

(b) With these observations, rule is disposed of.

(D.B.BHOSALE,J.)